



January 25, 2000

Mr. James Hernandez
Mayor, Day, Caldwell & Keeton, L.L.P.
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

OR2000-0246

Dear Mr. Hernandez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131704.

The Harris County-Houston Sports Authority (the "authority") received a request for payroll reports and other related information submitted by Grinnell Fire Protection ("Grinnell"), a subcontractor performing construction work on a Houston baseball park. You state that the authority has no objection to releasing the requested information. However, because the requested information implicates privacy or proprietary concerns of a third party, you have notified Grinnell of the request in order to afford Grinnell an opportunity to raise exceptions to required public disclosure. *See* Gov't Code § 552.305. Grinnell has responded, claiming that the responsive payroll reports specifically are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We have considered the exceptions Grinnell claims and reviewed the submitted information

¹Grinnell makes no mention of the other requested items, namely the "Retirement Fund Memo" and "any documents that might reflect an explanation for payment by Grinnell of any rate of pay other than the established 'Journeyman'-'Sprinkler Fitter' hourly rate of \$19.65." Therefore, we assume that the authority intends to release whatever information is responsive to these request items.

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether the employee or officials has family members when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 requires the authority to withhold the specified information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). This section, by its terms, does not apply to anyone but current or former government employees or officials. *See, e.g.,* Open Records Decision No. 455 (1987) (section 552.117 does not apply to applicants). Because Grinnel informs us that its employees are not employed by the authority, you may not withhold the addresses and social security numbers under section 552.117 of the Government Code.

Grinnell also argues that section 552.102 protects the addresses and social security numbers of Grinnell's employees. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). However, this provision concerns information in the personnel file of an employee of a governmental body. Because Grinnell's employees are not employees of the authority, section 552.102 is not applicable.

Moreover, privacy does not protect the names, home addresses, and social security numbers from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 at 4 (1976) (construing statutory predecessor to Gov't Code § 552.101). This office has previously concluded that home addresses are not "intimate" information, and are therefore not protected as to private citizens, Open Records Decision Nos. 478 (1987), 455 (1987), 254 (1980), nor are social security numbers protected by common law privacy. *See* Open Records Decision No. 169 at 7-8 (1977).

However, federal law may prohibit disclosure of the employees' social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

Finally, we consider whether the authority must release the wage and benefits information contained in the requested payroll record. As explained above, section 552.101 of the Government Code encompasses common law privacy which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 373 (1983), we concluded that personal financial information can generally be considered highly intimate and embarrassing:

In our opinion, all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities. . . .

However, information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest not generally protected from public disclosure by common law privacy. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). For example, the salary of a public employee is not excepted from disclosure. Open Records Decision No. 342 (1982). Further, the doctrine of common law privacy does not generally except from disclosure public employee participation in an insurance program that is funded wholly or partially by his or her employer. Open Records Decision Nos. 600 at 9 (1992). In Open Records Decision No. 373 (1983), we concluded that the determination of whether the public's interest in obtaining highly intimate and embarrassing information is sufficient to justify its disclosure must be made on a case-by-case basis.

In this case, it is unclear whether the pay information regarding the Grinnell employees reflected in the payroll record at issue involves the expenditure of public funds. If any of the compensation received by the Grinnell employees, and recorded on the submitted payroll

record, came from public funds, then there is a legitimate public interest in the financial information contained in the payroll record. Therefore, if the payroll record reflects public funds with which the Grinnell employees have been compensated, then the authority must release the information to the requestor. However, if the payroll record solely reflects private funds with which the Grinnell employees have been compensated, then the financial information is confidential under common law privacy, as encompassed by section 552.101, and the authority must withhold the financial information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

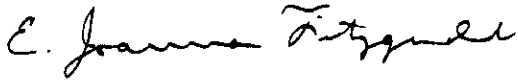
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Joanna Fitzgerald". The signature is fluid and cursive, with the first name "E." and last name "Fitzgerald" clearly distinguishable.

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 131704

Encl: Submitted documents

cc: Mr. Eric Nelson
3303 Main Street, Suite 300
Houston, Texas 77002-9392
(w/o enclosures)